SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1819-14T1

JUDITH E. TURKHEIMER,
f/k/a JUDITH E. BURKE,

Plaintiff-Appellant,

v.

PETER T. BURKE,

Defendant-Respondent.

Submitted July 5, 2016 – Decided January 20, 2017

Before Judges Carroll and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-1601-06.

Judith E. Turkheimer, appellant pro se.

David Perry Davis, attorney for respondent.

The opinion of the court was delivered by

ROTHSTADT, J.A.D.

In this post-judgment dissolution matter, plaintiff, Judith E. Turkheimer, appeals from the Family Part's November 6, 2014 order emancipating her and defendant, Peter T. Burke's, nineteen-

year-old son and terminating defendant's child support obligation. The court entered its order after conducting a plenary hearing and finding that the son reached the age of majority, graduated from high school, enrolled in one course at a community college, and that there was no evidence that he was disabled and incapable of supporting himself, as argued by plaintiff. Plaintiff contends on appeal that the court's decision was incorrect because it did not take into consideration that the "fundamental dependent relationship" between her son and his parents had not been "terminated"; her son suffered from a disability, which prevented his emancipation, and that there had not been a relinquishment of custody, which would allow defendant to be relieved of his child support obligation.

We have considered plaintiff's arguments in light of the facts found by the Family Part and our review of the applicable legal principles. We affirm.

In response to a motion filed by plaintiff to enforce the payment of child support, defendant filed a cross-motion seeking to terminate his child support obligation for his son. Initially, Judge Colleen M. Flynn granted plaintiff's motion and denied defendant's, but then on reconsideration ordered a plenary hearing on the issue of emancipation. At the hearing, only the parties

testified. Two exhibits were admitted into evidence: a list of stipulated facts and a high school grade report.

The facts adduced at the plenary hearing and found by Judge Flynn can be summarized as follows. The parties married in 1986 and were divorced in 2006 pursuant to a judgment of divorce that incorporated their marital settlement agreement (MSA). There were three children born to the marriage, including the son that is the subject of this action, who was born in 1995. Pursuant to the MSA, plaintiff had primary custody of the children, and defendant paid child support.

The parties' MSA addressed the issue of emancipation and defined it to occur, among other events, upon a child's "completion of high school." It stated that a child would be emancipated upon reaching eighteen years of age, if the child "does not attend college." It then states:

> In the event the child attends college, emancipation shall not occur until after the child has completed four continuous academic years of college education, so long as the child pursues college education with reasonable diligence and on a normally continuous basis, but in no event beyond the twenty-third (23rd) birthday of the child unless the delay is caused by the injury or illness of the child.

The parties' son graduated high school in June 2014. At the time of the plenary hearing in October 2014, he continued to live

at home, was not employed, and was taking one course at the local community college. Although he started off doing well while in high school, the son, who the parents viewed as being very intelligent, developed a history of absences and poor performance. Because of his poor performance, he was not allowed to graduate in 2013, as scheduled. The school offered an online program of instruction for him to follow that would have allowed him to complete his course of studies by January 2014. However, he did not pursue that opportunity and instead took courses at the school and graduated in June 2014 with very poor grades.

While he was a student, psychologists and social workers reviewed and evaluated the son throughout his academic experience. A psychological assessment performed after the parties' divorce revealed that he suffered from emotional problems that interfered with his ability to succeed in school. As a result, the school district eventually formulated an individualized education program (IEP) that provided him with weekly counseling. According to his IEP records, at the time he graduated high school, he was still considered "multiply disabled." The child, however, received virtually no psychiatric care or psychological treatment for any mental health issue, other than that which the school provided,

nor had he ever been determined to be disabled by the Social Security Administration or any other evaluator.[1]

In her comprehensive written decision dated November 6, 2014, Judge Flynn stated her findings of facts and reasons for granting defendant's motion. The judge summarized the contents of the school records that were part of the original motion record, described each party's testimony, and explained the law applicable to a court's determination of whether a child is emancipated.[2] The judge found that plaintiff had the burden to rebut the presumption of emancipation and failed to do so. The judge also observed:

> The financial support given to [the son] by either party at this point is voluntary. While such parental support is not uncommon in difficult financial times, and often necessary due to an adult child's failure to launch, an adult child who has completed his education, and who is without disabilities, is considered emancipated under the law.

Judge Flynn entered the order granting defendant's motion. This appeal followed.

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[1] The son was treated for a short amount of time by a doctor arranged by defendant. The treatment evidently helped him for a short while, but the son did not want to continue. At that time, the doctor stated, "he was doing well . . . [, and] he was okay."

[2] That law was significantly changed in 2016 when N.J.S.A. 2A:17-56.67 was enacted to create an automatic termination of support when a child reaches the age of nineteen. It becomes effective on February 1, 2017.

In her appeal, plaintiff argues that her son is not emancipated because he "is clearly not beyond the sphere of influence and responsibility exercised by a parent . . . and does not yet have the ability to obtain an independent status of his own." In support of her argument she cites to case law[3] that states a disabled child will not be considered emancipated "until and if he or she is relieved of the disability." While we agree with her legal argument, we find no support for her factual contentions about her son's disability.

Our review of the trial judge's fact-finding is limited. "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). Such

[3] Plaintiff cited to Kruvant v. Kruvant, 100 N.J. Super. 107, 118 (App. Div. 1968) (involving an adult child who had been institutionalized prior to emancipation and holding where "an adult son of a divorced husband becomes so disabled as to be incapable of maintaining himself because of a mental illness or emotional disorder which pre-existed his attaining his majority, the husband may be required at the suit of the wife to contribute to the cost of his necessary care and maintenance"); and Ribner v. Ribner, 290 N.J. Super. 66, 72 (App. Div. 1996) (reversing determination that child was emancipated under Florida law where there was no opportunity to present psychiatric or medical evidence about an adult child who was being treated for a mental health issue from which he allegedly suffered, while attending community college on a full-time basis, "succeeding in his studies," and working thirty-five hours a week).

deference "is especially appropriate when the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997). Moreover, "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare, supra, 154 N.J. at 413. "Accordingly, when a reviewing court concludes there is satisfactory evidentiary support for the trial court's findings, 'its task is complete and it should not disturb the result, even though it has the feeling it might have reached a different conclusion were it the trial tribunal.'" Llewelyn v. Shewchuk, 440 N.J. Super. 207, 213-14 (App. Div. 2015) (quoting Beck v. Beck, 86 N.J. 480, 496 (1981) (citation and internal quotation marks omitted)).

"A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). "[A] trial judge's legal conclusions, and the application of those conclusions to the facts, are subject to our plenary review." Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015) (quoting Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)). "To the extent that the trial court's decision constitutes a legal determination, we

review it de novo." D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013).

Applying those guiding principles, we conclude from our review that Judge Flynn correctly determined that plaintiff failed to prove the parties' son was not emancipated. We substantially agree, therefore, with the reasoning stated in her thoughtful written decision. We add only the following brief comments.

Absent an agreement to the contrary, when a child reaches the age of majority it is "prima facie, but not conclusive, proof of emancipation." Llewelyn, supra, 440 N.J. Super. at 216 (citation omitted). "Once the presumption is established, the burden of proof to rebut the statutory presumption of emancipation shifts to the party or child seeking to continue the support obligation." Ibid. Where the issue raised involves a claim that an adult child suffers from a mental health condition, even one for which the child is under treatment, "there [must be] evidence [that the child's] issues interfered with [his or] her ability to be independent" in order to rebut the presumption. Id. at 218.

Plaintiff, as the party obligated to rebut the presumption of emancipation, failed to meet her burden of proof. She was given an opportunity to present competent evidence from experts, see Ribner, supra, 290 N.J. Super. at 72, but only presented her own opinion, which was based, in part, upon school records that

did not support the contention that the parties' son suffered from any disability that prevented him from moving beyond his parents' sphere of influence. The school records were not a competent substitute for expert testimony and, in any event, they only related to the son's problems in school. There simply was no evidence that the son suffered from any illness that prevented him from supporting himself. See also, Kruvant, supra, 100 N.J. Super. at 118.

Affirmed.